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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED
LEGAL NEWS NOTES AND FACETIÆ

VOL. 4

JUNE, 1897

No. 1

CASE AND COMMENT

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THE LAWYERS' CO-OPERATIVE PUB. CO.,
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Jeopardized Religious Liberty.

Concerning the conviction of Commander Booth Tucker of the Salvation Army for keeping a disorderly house, he says in the "War Cry." "The verdict is an extraordinary one. In the light of future history it will be placed on a level with some of the strangest perversions of law ever witnessed. A new offense has been created by the action of the jury which jeopardizes the religious liberty of tens of thousands of the best citizens of the United States." If he can show that the verdict was wrong on the facts, and that there was in reality no unreasonable disturbance of the hours of sleep, he may justly claim to have been wronged by the conviction. But if it was true, as the jury found, that the occupants of the place were in the habit of making an unreasonable disturbance of the neighbors' rest during proper hours for sleep, the place was justly called "disorderly," and the conviction was a righteous one.

Doubtless the Salvation Army was too wide awake to think much about those who wanted to sleep. Enthusiastic people who make the night lively, whether with hallelujahs or otherwise, are quite likely to forget that there may be people near by who need rest. To multitudes of people undisturbed sleep is an abso-

lute necessity if they are to avoid being wrecked by the strain of their daily activities. In these days of multiplied noises and the extreme nervous tension of daily life, the protection of the hours of sleep is of increasing importance. All-night revelry should not be tolerated when neighbors are near. A hallelujah chorus continued all night will hardly prove conducive to the spiritual improvement of those whose rights are outraged by enforced sleeplessness. A disregard of the right of others to enjoy the "balm of hurt minds" during the usual hours for sleep is an outrage, and, if persisted in, would indicate a peculiar obliquity of the moral sense. Unless the verdict in this case is against the facts, the claim that religious liberty is jeopardized thereby is a rare burlesque. Comic opera could have nothing more grotesque than the claim of a religious right to wrong one's neighbors.

The good work of the Salvation Army and of every organization to uplift man should be appreciated to the full; but the righteousness of a cause does not give its workers a license to trespass on the rights of others. The benevolent or religious character of an enterprise cannot excuse the impudence of the assumption that they are above the ordinary rules of fairness and justice. To punish them for wronging others as promptly as if they were criminals of a lower class will not injure their cause, but will only free it from reproach.

Evidence of Telephone Conversation.

Amusing "news," to the effect that a new precedent for the courts had been established by allowing a conversation through telephone to be admitted as evidence, recently reported the judge as saying: "I find that this point has never been ruled upon, and I think it is

time a precedent was established." Commenting on this, a New York paper says the judge made a mistake, because a precedent was established in 1894 by Judge Benedict, of the United States circuit court for the southern district of New York in the case of *United States v. Matthews*. This, again, is somewhat pleasant, since courts have been admitting evidence of that kind for about a dozen years, and the General Digest has had for it a specific division in the title "Evidence," headed "Telephone Conversations." Among the cases in which such evidence has been admitted are *Wolfe v. Missouri P. R. Co.* 97 Mo. 473, 3 L. R. A. 539, and *Oskamp v. Gadsden*, 35 Neb. 70, 17 L. R. A. 440; and with the latter case is a note in which the previous decisions on the subject are reviewed.

The admissibility of such evidence where there is testimony that the voice of the speaker was recognized has been so long established that it is very ludicrous to read telegraphic news heralding that its admission makes a new precedent for the courts of the United States. The statement in the despatch that the judge said he found the point had never been ruled upon doubtless originated with the enterprising reporter.

Bicycles as Baggage.

An interesting opinion of Judge Bond, of the St. Louis court of appeals, reaches the conclusion that a bicycle—at least when it is not boxed, packed, or guarded in any way—does not constitute baggage which a carrier is obliged to receive. The opinion reviews the cases that have been decided on various points respecting bicycles, and says: "In cases involving the use of streets, the payment of tolls, and liability for negligence, bicycles are uniformly held to be vehicles or carriages. *Mercer v. Corbin* (Ind.) 3 L. R. A. 221; *Thompson v. Dodge* (Minn.) 28 L. R. A. 608; *Geiger v. Turnpike Road* (Pa.) 28 L. R. A. 448; *Com. v. Forest* (Pa.) 29 L. R. A. 365; *Twilley v. Perkins* (Md.) 19 L. R. A. 632, and notes. This consensus of authority establishes that the locomotive machine known as a bicycle belongs to the genus "vehicle" or "carriage." Respecting the claim that although it had no utility during the trip, it was convenient and useful at the end of the journey, the court says: "Cannot the same be said, and with equal truth, of every other form of a vehicle or carriage which the traveler might be able to own? Some of these, as the two-wheeled

skeleton cart used in training horses, fall within the statutory limit of 100 pounds as to weight, and so, indeed, might the light single-seated buggy often observed on the streets." Respecting the argument that the lesser size of the bicycle may distinguish it from other vehicles for the purpose of baggage, he says: "Bicycles, though lighter and smaller than other vehicles, are so delicately constructed, in the effort to secure the greatest strength compatible to the lightest weight, that their handling necessarily requires the greatest care and skill as well as ample space to prevent injury by external contact."

But, irrespective of other considerations, the judge holds that if a bicycle is not boxed, packed, or guarded in any way, it is for that reason excluded from the class of things that can be regarded as baggage. He says: "The law does not recognize as baggage the things contained, as discerned from the bag, box, trunk, boxing case, or receptacle which contains them, nor is any duty cast upon the carrier to receive personal baggage until it has been placed in a condition of reasonable security for handling and transportation."

This is the first decision by an appellate court on this question, and will do much to settle the law of the subject. The reasoning of Judge Bond will not be easily answered.

Camera Exposures.

Sham fronts of great buildings which from the street look fireproof but from behind look like kindling wood, are being effectively exposed in published photographic views by the "Rough Notes" of Indianapolis. These photographic exposures show that they more than rival the Janus-faced house of the humorist, which was Queen Anne in front and Mary Ann behind. Companion pictures show magnificent fronts of marble or granite with rears of inflammable wood and paint. Pointed and persistent inquiries accompany these pictures from week to week, asking if the buildings were constructed in keeping with the building regulations of the city, and if not, was it merely a matter of official neglect. Some smarting among negligent or dishonest officials and insurance agents may result, with ultimate benefit to the public. Illustrations from other cities also are promised. "Rough Notes" has begun a great service to the public.

A False Pedigree.

To find one's own children away from home

compelled to bear a strange name is something of a shock to natural feeling. Yet "Case and Comment" occasionally has that experience. Just now it sees its little "Bankrupt Judges," which first saw the light in June, 1896, reappearing elsewhere erroneously credited to the "Albany Law Journal." This is because that journal in taking the article from "Case and Comment" failed, through inadvertence doubtless, to give any credit for it. It has been noticed from time to time that other traveling children of "Case and Comment" have sometimes had their pedigree ignored and afterwards had a false pedigree imposed upon them. Doubtless the change of patronymic has never really damaged anything except parental feeling, and the children may not bring great honor either to the real or pseudo parent. Yet, after all, "Case and Comment" pretends to see all its children travel under their own family name.

The Nightmare of the Bar.

"We can get along now, but what will our sons do?" said a New York city lawyer who called upon us the other day while speaking of the multitude of law reports. All manner of remedies are suggested, but still the horror grows. Some of these remedies might be effective to alleviate the trouble, others would merely aggravate it. One proposal, to suppress judicial opinions and have mere statement of facts and rulings reported, but to have a commission of jurists make commentaries on the law, with annual continuations, stating the effect of new decisions, would add a new source of tribulation. It would make a two-headed or bi-lingual court, providing a perpetual puzzle as to their relation or agreement with each other, *i. e.*, as to the interpretation put by the commission on the decisions of the court. While the bulk of the reports would be reduced, the multitude of decisions would not, and their interpretation would be complicated by the interpolation of a commentary which must be considered because official, but could not be relied upon because not binding on the court.

The suggestion that all opinions should be *per curiam* has much force. Split courts might find it difficult to agree in such an opinion, but in doing so they would abolish difficulties now created for the profession by inharmonious separate opinions in the same case. Of the space now taken by opinions much more than half would doubtless be saved. The chief loss would be in the omission of

much of the wealth of judicial exposition that now illuminates many hard questions. But, however brief the opinions may be made, or if they are entirely replaced by mere syllabi, the fact remains that a great number of courts are all the time deciding questions for many millions of people. This must continue. To complain because the body of law grows is in some degree like complaining because the nation grows. Yet the very fact that the growing multitude of decisions is inevitable demonstrates the need of the best possible aids to a ready knowledge of those which one may desire to use. As the words of the English language are put into the orderly arrangement of a dictionary for ready reference, the mass of decisions must be so arranged that one may readily find the decisions on any desired point. Such an arrangement of the current decisions is made by a digest which will cost a lawyer less than his newspapers. But for the accumulated body of English and American decisions, what can he do? To buy the reports of all these would require great wealth, yet any day he may need to know what they decide on an important question not yet settled in his own state. Even if put into a library with all these reports, he is helpless without the aid of a key of some kind. His ideal help is a work which will enable him to turn readily to a complete collection of the pertinent authorities on any important question.

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Among the New Decisions.

Act of God.

Applying the doctrine that a loss or injury is due to the act of God where it is occasioned exclusively by natural causes such as could not be prevented by human care, skill, and foresight, it is held, in *Wald v. Pittsburg, C. C. & St. L. R. Co.* (Ill.) 35 L. R. A. 356, that an unprecedented flood by reason of which the baggage of a passenger is swept away is an act of God; but that where unnecessary delay of a carrier made the loss of the property by such flood possible the carrier is liable.

Banks.

The right of a bank to set off the unmatured note of an insolvent depositor against the deposit is held, in *Thomas v. Exchange Bank of Angus* (Iowa) 35 L. R. A. 379, to be superior to the rights of a drawee of a check of the deposit, of which the bank had no notice until after it learned of the depositor's insolvency.

Bills and Notes.

A delay of nearly ten years before making a demand on a demand note is held, in *Leonard v. Olson* (Iowa) 35 L. R. A. 381, to be unreasonable, and not to be excused by the fact that the maker of the note had removed from the state, unless notice of that fact and of the fact of nonpayment was given to the indorser within a reasonable time.

The fraudulent addition after indorsement of a promissory note, of words to make it payable with interest, is held, in *Citizens' Nat. Bank v. Williams* (Pa.) 35 L. R. A. 464, to prevent a recovery from the indorser, although such words had been stricken out before it came into the hands of a bona fide holder, who brings suit upon the note.

The date borne by a promissory note is held, in *Newman v. King* (Ohio) 35 L. R. A. 471, to be a material part thereof, the alteration of which, without the knowledge or consent of the maker, will render the instrument void even in the hands of an innocent indorsee for value.

A peculiar condition of things respecting the negotiability of a note secured by a mortgage exists in Michigan. In the case of *Brooke v. Struthers* (Mich.) 35 L. R. A. 586, it is held by two of the judges that a provision in a mortgage securing a note which is otherwise negotiable, to the effect that the mortgagor

shall pay taxes and assessments, on failure of which the whole debt shall become due, destroys the negotiability of the note; while in the case of *Wilson v. Campbell* (Mich.) 35 L. R. A. 544, a similar provision is declared by other judges not to defeat the negotiability of the note. In neither case was there a clear majority of the court in favor of either proposition.

Bonds.

A bond to indemnify a sheriff against liability for failure to execute final process, when given by the person against whom the process was directed, is held, in *Harrington v. Crawford* (Mo.) 35 L. R. A. 477, to be invalid on grounds of public policy because it is intended to prevent the officer from doing his duty.

Building and Loan Associations.

A by-law that withdrawing members shall be paid in the order of the presentation of their applications is held, in *Engelhardt v. Fifth Ward Permanent D. S. & L. Asso.* (N. Y.) 35 L. R. A. 289, to be a reasonable regulation which is binding on existing members, and it is also held that a withdrawing member cannot sue the association until there are funds in the treasury out of which his claim can be paid, at least in the absence of bad faith or the insolvency of the association, where the articles provide for refunding when the necessary funds are collected.

Charities.

A trust under a will to dispose of property among the charitable and benevolent institutions of a city as the trustee shall choose, and in such sums and proportions as he shall deem proper, is held, in *People v. Powers* (N. Y.) 35 L. R. A. 502, to be unenforceable because of the failure to designate or describe the class or kind of beneficiaries to whom distribution is practicable, or that can with reasonable certainty be identified. The New York Law of 1893, chap. 701, is held inapplicable to such a trust previously created under which rights of property had become vested.

Civil Service.

The preference of honorably discharged soldiers and sailors in appointment and promotion without regard to their standing on any list, which is given by N. Y. Const. art. 5, § 9, is held, in *Re Keymer* (N. Y.) 35 L. R. A. 447,

not to exempt them from examination but to operate when as a result of examination they are placed upon a list from which appointments and promotions can be made, and a statute exempting them from examination is held unconstitutional.

Contracts.

An agreement for an association of master stevedores of a city, establishing a schedule of minimum prices or charges and containing stipulations against the allowance or any discount therefrom except as the association may authorize, is held, in *Herriman v. Menzies* (Cal.) 35 L. R. A. 318, not to constitute an unlawful restraint of trade, in the absence of anything to show that the association has the substantial control of the business in the city, or that the schedule of prices fixed is unreasonable, or that the restrictions are such as to preclude fair competition.

A contract by an employee of a railroad company to the effect that his employer might deduct from his wages a certain sum per month for a relief fund, and that in case of accident his acceptance of relief from the relief department should operate as a release of the employer, is held, in *Pittsburg, C. C. & St. L. R. Co. v. Cox* (Ohio) 35 L. R. A. 517, to be based upon a valid consideration, not lacking in mutuality, and not contrary to public policy.

A contract for the "permanent employment" of a person on condition that he would give up his business and enter the employment of another person is held, in *Carnig v. Carr* (Mass.) 35 L. R. A. 512, to be sufficiently mutual, and not to be unlawful or against public policy, or within the statute of frauds.

Corporations.

The existence of an unpaid assessment against shares of stock in a corporation is held, in *Craig v. Hesperia Land & W. Co.* (Cal.) 35 L. R. A. 306, insufficient to justify a refusal to transfer the stock upon its books into the name of another owner.

The right of the owners of a majority of the stock in a corporation to agree to be bound by the will of a majority of themselves in voting the stock for a term of five years so as to keep the control of the corporation from passing to other persons is held, in *Smith v. San Francisco & N. P. R. Co.* (Cal.) 35 L. R. A. 309, to be valid when it was made by persons who united in purchasing a block of stock.

In order to render a newly organized corporation liable at common law for the debts of an established corporation or firm to whose business and property it has succeeded, it is held, in *Austin v. Tecumseh Nat. Bank* (Neb.) 35 L. R. A. 444, that it should, in the absence of a special agreement, affirmatively appear that the transaction is fraudulent as to creditors of the old corporation, or that the new corporation is in effect a mere continuation of the former.

Overdrafts of a corporation which was entirely owned by one member of a banking firm are held, in *Potts v. Schmucker* (Md.) 35 L. R. A. 392, to give no rights to the trustee of the insolvent bank to share in the assets of the corporation until after the creditors of the corporation have been paid.

Damages.

The damages for the wrongful but not malicious ousting of a tenant from possession of a part of a rented farm are held, in *Irwin v. Hess* (Pa.) 35 L. R. A. 415, to be the difference in rental value of the farm with and without such part, although a portion of it had been planted at the time.

The damages recoverable by one who gets a telegram, for a mistake in the price in an authority to sell goods, are held, in *Fererro v. Western Union Teleg. Co.* (D. C.) 35 L. R. A. 548, to be limited to such difference in price, excluding any loss of profits on a contract of resale which he made on the faith of the telegram, but failed to carry out because he had himself refused to receive the goods without any excuse except his disappointment caused by the mistake in the price.

The measure of damages for delay in delivering a cipher telegram is held, in *Furgusson v. Anglo-American Teleg. Co.* (Pa.) 35 L. R. A. 554, to be limited to the amount paid for its transmission.

Druggists.

A sale of chloroform to an intoxicated person who is not shown to be absolutely without mind to the knowledge of the seller is held, in *Meyer v. King* (Miss.) 35 L. R. A. 474, to be insufficient to constitute negligence; and the sale of chloroform to a minor in violation of statute is held insufficient to render the seller liable for the minor's death from drinking it, if the sale was not the proximate cause of the death.

Evidence.

The execution of a deed or other written instrument other than a will is held, in *Garrett v. Haushue* (Ohio) 35 L. R. A. 321, to be provable by one or more subscribing witnesses, the officer before whom the instrument was acknowledged, or the party who signed and executed the instrument; and the court holds that it was not absolutely necessary to call for the attesting witnesses. With this case is a note reviewing the great number of authorities on the necessity of calling subscribing witnesses to prove attested instruments.

A surgeon who is shown to be duly qualified in his profession, and who has testified fully as to the condition of a limb that had previously been amputated, is held, in *Tullis v. Rankin* (N. D.) 35 L. R. A. 449, to be properly asked what was the cause of the condition in which he found the limb.

Oral evidence to show that a wife's deed of trust of her legal estate is security for her husband alone as the principal debtor on a note signed by him and several other persons is held, in *McCollum v. Boughton* (Mo.) 35 L. R. A. 480, to be inadmissible for the purpose of making her land liable for the debt before holding the other signers liable.

Executors and Administrators.

The right of an ancillary administratrix appointed in California to recover from a domiciliary administrator appointed in Indiana, who is temporarily within the former state, a certificate of deposit issued by a California bank and belonging to the estate, is sustained in *McCully v. Cooper* (Cal.) 35 L. R. A. 492, where the receiver of the bank had refused to allow the certificate as a valid claim, and the domiciliary administrator cannot maintain an action in the state thereon.

An action to recover stock given by a testator who resided in one state where the will is probated is held, in *Russell v. Hooker* (Conn.) 35 L. R. A. 495, to be one which cannot be brought in another state, although the corporation which issued the stock is located there and one of the executors is a resident of that state and has taken out ancillary letters of administration there.

Fraud.

False statements and representations which are merely expressions of opinion upon matters of conjecture and uncertainty are held, in *Hedin v. Minneapolis Medical & S. Inst.*

(Minn.) 35 L. R. A. 417, to be, generally speaking, not actionable, although there are many cases in which the false assertion of an opinion will amount to fraud, as in a case where a party possesses special learning or knowledge on the subject with respect to which he expresses an opinion, and the person to whom he makes it is ignorant on the subject and is injured by relying on the opinion.

Garnishment.

The attachment by garnishment of the property of a defendant upon which the garnishee has a lien is held, in *Hartzell v. Vigen* (N. D.) 35 L. R. A. 451, to be sufficient under the Minnesota statutes to give jurisdiction to render a valid judgment *in rem* against a non-appearing, nonresident defendant who is served by publication only.

Highways.

The permanent and exclusive appropriation of a portion of a sidewalk next to a building for a fruit stand is held, in *Costello v. State* (Ala.) 35 L. R. A. 303, to constitute an indictable nuisance, although it is erected on the covering of an open way to a cellar which had existed without objection for several years and was erected under a license from the city.

Infants.

The Georgia statute for the prevention of cruelty to children is construed in *Collins v. State* (Ga.) 35 L. R. A. 501, to be inapplicable to a boy almost as large as his father, but not quite as strong, and who had attained the physical strength and stature of manhood.

Insurance.

An insurance company which under its contract elects to repair and fails to do so is held, in *Henderson v. Crescent Ins. Co.* (La.) 35 L. R. A. 385, to be liable for the cost of the repairs without reference to the amount of the insurance, if the assured completes the repairs.

License.

A specific tax levied under state statute upon every sewing machine company or its agents and all wholesale dealers in sewing machines manufactured by companies that have not paid the tax is held, in *Singer Mfg. Co. v. Wright* (Ga.) 35 L. R. A. 497, to be constitutional.

Public Improvements.

A lien for street-improvement assessments is held, in *Seattle v. Hill* (Wash.) 35 L. R. A. 372, to be superior to mortgages which were existing at the time when the lien of the assessment accrues where the statutes make such assessments a part of the tax due on the property and collectible as other taxes, and make tax liens prior to mortgages.

Taxes.

A county treasurer who receives checks for taxes required to be paid in cash, and thereupon pays over the amount to the proper officer, is held, in *Mercantile Trust Co. v. Hart* (C. C. App. 8th C.) 35 L. R. A. 352, to make the payment voluntarily and to have no right to be subrogated to the lien of the tax,—especially as against bondholders under a mortgage from the taxpayer authorizing foreclosure in case of default in payment of taxes, where the taxes have appeared on the record to have been paid.

Tender.

The reasonableness of a tender of a \$5 bill in payment of fare on a street car is held, in *Barker v. Central Park, N. & E. R. R. Co.* (N. Y.) 35 L. R. A. 489, to be a question of law for the court, and it is decided that such a tender is not reasonable and the conductor cannot be required to furnish change for that amount where there is a rule of the company requiring change to be furnished only to the amount of \$2.

Trial.

A jury summoned by direction of the court from the country districts of a county to the exclusion of residents of a city is held, in *Zanone v. State* (Tenn.) 35 L. R. A. 556, to be illegal under a constitutional guaranty of an impartial jury of the county.

Villages.

A settlement consisting of fourteen families averaging about five persons each who reside along a stream for a distance of about 2½ miles, separated from 40 rods to 1 mile or more, occupied chiefly in farming but having a school district, district school, and postoffice, while the nearest settlement in any direction was about 6 miles, is held, in *People v. McCune* (Utah) 35 L. R. A. 396, to be a village within the meaning of a statute prohibiting the keeping of cattle within 7 miles of any village

where the refuse of the corral, camp, or bedding place will find its way into a stream of water used by the inhabitants.

Waters.

A division of the use of the water power in each channel of a river where it is divided by an island and the interests of riparian proprietors upon both channels have become intertwined, if not amalgamated, is held, in *Warren v. Westbrook Mfg. Co.* (Me.) 35 L. R. A. 388, to be within the power of a court of equity so as to adjust all the rights of all the parties in the whole water power in both channels. The same case holds that long existence and use of dams across both channels of a river where it is divided by an island may so affect the flow of the water that the natural flow is no longer the rightful flow, and that the owner of one end of a dam may acquire a prescriptive right in the continued maintenance of the other end.

Damages which arise from the proper construction and maintenance of a highway, including such fills, cuts, ditches, and culverts as a proper construction and maintenance may require, are held in *Churchille v. Beethe* (Neb.) 35 L. R. A. 442, to be compensated in the proceedings for opening the highway, and therefore an action to enjoin the construction of a culvert across a highway will not lie when the culvert is reasonably necessary for the road.

Wills.

A gift over in the event of the death of any of testator's children "without living heirs of their body" is held, in *Glover v. Condell* (Ill.) 35 L. R. A. 360, to import a definite failure of issue, and not to contravene the rule against perpetuities,—especially where the gift is of personalty and the shares of any child dying without living heirs is to be divided among the remaining children of the testator.

Witnesses.

Some important questions as to the cross-examination of a defendant in a criminal case who takes the witness-stand in his own behalf are decided in *State v. Pancoast* (N. D.) 35 L. R. A. 518, and it is held that he is subject to the same rules of cross-examination that govern other witnesses, and may be required to answer any relevant and proper question that will tend to convict him of the crime for which he is being tried, even though it may also tend to convict him of some collateral crime.

Personal.

The justices of the supreme court of Illinois met on June 3, and elected as successor to Chief Justice Magruder, whose term had expired, Justice Jesse J. Phillips. The new chief justice has served the state in a judicial capacity since 1879, when he was elected to the circuit bench. In 1893 he was elected justice of the supreme court to succeed Justice Scholfield. He is an able, conscientious, and profound jurist.—Chicago Legal Adviser.

New Books.

"The Order of The Coll." By Alexander Pulling. 1 Vol. \$3. The Boston Book Co., Boston, Mass.

"Law Latin." A Treatise in Latin, with Legal Maxims and Phrases. By E. Hilton Jackson. 1 Vol. \$2.50. John Byrne & Co., Washington, D. C.

"The Ontario Insurance Act, 1897." With the Ontario Decisions since 1876 and the Decisions of the Supreme Court of Canada. By Roderick James Maclellennan. 1 Vol. \$1.50. The Carswell Co., Toronto.

"Digest of Decisions and Opinions Relating to Pensions and Bounty Lands." With a Supplement Containing the Pension Laws and Bounty Land Laws, with Historical Development of the Pension System. By J. M. Reynolds & W. L. Chitty & J. W. Bixlie. 1 Vol. \$2. W. H. Lowdermilk & Co., Washington, D. C.

"Law of Mines and Mining in the United States." By Daniel Moreau Barringer & John Stokes Adams. 1 Vol. \$7.50. Little, Brown, & Co., Boston, Mass.

"Volume 4 of Ballard's Annual of the Law of Real Property." \$6.50. The Ballard Publishing Co., Crawfordsville, Ind.

"The Annotated Revised Statutes of Ohio." By Clement Bates. 3 Vols. \$15. W. H. Anderson & Co., Cincinnati, Ohio.

"A Supplement to Reid's Reference Index of Parallel Cases in the Supreme and Superior Courts of Pennsylvania." 1 Vol., interleaved, \$5. T. & J. W. Johnson & Co., Philadelphia, Pa.

"Notes on the Statutes of Arkansas." By Judge Leland Leatherman. 2 Vols. \$15. E. W. Stephens, Columbia, Mo.

"Select Cases in Personal Property." By John D. Lawson. 1 Vol. \$4. E. W. Stephens, Columbia, Mo.

"Criminal Code of Ohio." With Forms, Precedents, etc. By Judge Moses F. Wilson.

1 Vol. \$5. The Robert Clarke Co., Cincinnati, Ohio.

"Annotated Digest of Virginia Reports." By R. M. Brown & Sam. N. Hurst. \$6 per Vol. Hurst & Co., Pulaski, Va.

"Cook's Code (Criminal and Penal.)" 1 Vol. \$5. H. B. Parsons, Albany, N. Y.

"The New 1897 Village Law." By Cumming & Gilbert. 1 Vol. \$3. Matthew Bender, Albany, N. Y.

"The Liquor Tax and Hotel Law." By Cumming & Gilbert. 1 Vol. \$2.50. Matthew Bender, Albany, N. Y.

"The New Lien Law for the State of New York." Pamphlet. \$.50. Matthew Bender, Albany, N. Y.

"The Revised Village Charter." By John N. Drake. (In Preparation.) 1 Vol. \$3. The Lawyers' Co-Operative Publishing Company, Rochester, N. Y.

Recent Articles in Law Journals and Reviews.

Some Observations on The Jury System.—6 Michigan Law Journal, 153.

International Law.—36 Am. L. Reg. & Rev. N. S. 353.

Some Aspects of the Law of Libel, Applicable to Newsdealers.—36 Am. L. Reg. & Rev. N. S. 377.

Waiver of Statutory Provisions by Contract.—3 University Law Review, 179.

The Status of Partnership Real Estate.—3 University Law Review, 169.

Demurrer to Evidence.—44 Cent. L. J. 509.
Recovery of Money Paid by Purchaser.—44 Cent. L. J. 515.

The Law and Practice of Connecticut Concerning Hearing in Damages on Default, or Demurrer Overruled.—6 Yale Law Journal, 121.

The Promotion of Uniform Legislation.—6 Yale Law Journal, 132.

Personal Tradenames.—6 Yale Law Journal, 141.

Construction.—6 Yale Law Journal, 59.

On a Permanent Arbitration Treaty.—6 Yale Law Journal, 66.

Actions on Foreign Judgments.—6 Yale Law Journal, 71.

Determining the Validity of a Patent on Demurrer to a Bill in Equity.—5 Yale Law Journal, 213.

Taking Corporate Shares by Right of Eminent Domain.—5 Yale Law Journal, 205.

The Kowshing, in the Light of International Law.—5 Yale Law Journal, 247.

The Originality of the United States Constitution.—5 Yale Law Journal, 239.

Some Recent Developments of the Law of Patents.—6 Yale Law Journal, 179.

The Presumption of Innocence in Criminal Cases.—6 Yale Law Journal, 185.

The Hawaiian Judiciary.—6 Yale Law Journal, 213.

Injunction in Federal Courts.—6 Yale Law Journal, 245.

When May a Railroad Company Make Guaranties?—6 Yale Law Journal, 252.

The Law of Icy Sidewalks in New York State.—6 Yale Law Journal, 258.

Some Questions Relating to the Measure of Damages in Street Opening Proceedings in New York City.—6 Yale Law Journal, 263.

The Source and Spirit of the Common Law.—2 Chic. L. J. Wkly. N. S. 279.

The Court's Jurisdiction of the Res in Attachment and Garnishment Cases.—44 Cent. L. J. 467.

Sale or Bailment.—44 Cent. L. J. 471.

Some Testamentary Habits and Peculiar Wills.—3 Western Reserve Law Journal, 86.

The Constitutionality of the Ohio Torrens Land Title Registration Law.—3 Western Reserve Law Journal, 92.

Is the President's Power Exclusive?—55 Albany Law Journal, 376.

Donatio Mortis Causa of One's Own Check.—36 Am. L. Reg. & Rev. N. S. 289.

The Form of an Interpleader Issue.—17 Canadian Law Times, 129.

American Lawyers and Their Unmaking.—6 Michigan Law Journal, 136.

Recovery on Quantum Meruit by Servant Where He Abandons Service of Master.—44 Cent. L. J. 451.

Revocation—Deeds—Delivery.—44 Cent. L. J. 452.

Answers in Insurance Suits.—44 Cent. L. J. 407.

Estoppel in Pais.—44 Cent. L. J. 410.

Liability for the Sale of Intoxicants.—44 Cent. L. J. 363.

Construction—Entirety—Performance.—44 Cent. L. J. 367.

Restraints on Alienation.—17 Canadian Law Times, 105.

Recent Phases of Contract Law. II. The Right of a Third Party to Sue for a Breach of Duty.—44 Cent. L. J. 424.

Judgment Rendered in Another State.—Situs of Debt.—44 Cent. L. J. 427.

Nervous Shock.—61 Justice of the Peace, 307.

Situs of Choses in Action.—11 Harvard Law Review, 95.

Constitutionality of the Sherman Anti Trust Act of 1890, as Interpreted by the United States Supreme Court in the Case of the Trans-Missouri Traffic Association.—11 Harvard L. Rev. 80.

The Incidence of Rent.—11 Harvard L. Rev. 1.

The Pledge Idea: A Study in Comparative Legal Ideas. III.—11 Harvard L. Rev. 18.

Some Problems in Overdue Paper.—11 Harvard L. Rev. 40.

The Humorous Side.

A DIVIDED DANIEL.—The story of a trial justice who was "divided against himself" comes to us from a South Carolina correspondent. A case in which the parties, witnesses, and counsel were all of high standing and personally known to the justice came before him for trial, and a jury was waived. But the testimony of the respectable witnesses was utterly irreconcilable, and so doubtless were the speeches of the four able lawyers. Out of this predicament he triumphantly emerged with the following decision: "I am acting in a dual capacity in this case,—sitting as a jury to try the facts and as a judge to expound the law. As a jury I am unable to agree upon a verdict on the facts, and therefore as a judge I order a mistrial."

THE COW AND THE CONSTABLE.—The following headnotes appear in Kulp's report of a recent Pennsylvania case:

"1. When a cow, city-bred and country-sold, dissenting from its changed environment, and disregarding the right of its purchaser, returns to the city and conducts herself upon the highway in a manner prejudicial to little children, and repugnant to municipal ordinances, a constable who recognizes her as an old acquaintance, and extends the friendly shelter of his barn, being assisted therein by a policeman, is not guilty of obstructing the latter in the performance of duty by subsequent refusal to surrender possession, without evidence upon the record showing special authority in the policeman from the mayor under the ordinance involved, because, in the absense thereof, neither officer had exclusive right, and hence the constable being *prior in tempore*, was *potior in jure*.

"2. *Scoble*, a case which involves, upon cer-

tiorari, the juridical relation of a cow to a constable, and of both to a policeman, demands more elaborate consideration than courts usually bestow upon litigation originating before justices of the peace."

THE EPIC OF THE CHICKENS.—A recent opinion of Judge Clark in a North Carolina case, reads as follows: "This is an indictment for cruelty to animals, to wit, sundry Stanley county chickens, 'tame villatic fowl,' as Milton styles them in stately phrase. The prosecutor and defendants lived very near to each other, and their chickens were exceeding sociable, visiting each other constantly. But, after the defendants had sown their peas, they had no peace, for the prosecutor's chickens became lively factors in disturbing both. The younger defendant, Oscar, as impetuous as his great namesake, the son of Ossian, pursued one of the prosecutor's chickens clear across the lot of another neighbor, one Mrs. Freeman, and, intimidating it into seeking safety in a brush pile, pulled it out ignominiously by the legs, and putting his foot on his victim's head, by muscular effort, pulled its head off. Then, in triumph, he carried the headless, lifeless body, and threw it down in the prosecutor's yard in the presence of his wife, also letting drop some opprobrious words at the same time. The prosecutor was absent. Another chicken Oscar also chased into the brush pile, and, sharpening a stick, jabbed it at said chicken, and through him, so that he then and there died; and Oscar, carrying the chicken impaled on his spear, threw it into the prosecutor's yard. He knocked over another, and, impaling it in the same style, also threw its lifeless remains over into the prosecutor's yard, as the Consul Nero caused the head of Asdrubal to be thrown into Hannibal's camp. On yet another occasion Oscar did beat a hen that had young chickens, which, with maternal solicitude, she was caring for, so that she died, and the young ones, lacking her care, also likewise perished. The aforesaid Oscar, on other divers and sundry times and occasions, was seen 'running and chunking' the prosecutor's chickens. The other defendant, Oscar's father, proposed to the prosecutor 'to strike a dead line, and each one kill everything that crossed the line.' The offer seemed too unrestricted, and the cautious prosecutor, whose thoughts were 'bent on peace' as much

as his chickens were on peas, firmly declined the dead-line proposition; but Oscar's father said he 'guessed he would do that way.' As the evidence limited his proceedings to this declaration of war, without any overt act, a nol. pros. was entered as to him, and Oscar was left alone to bear the brunt. 'Having,' in the language of Tacitus, 'made a solitude, and called it peace,' he naturally protests against being now charged with the odium and burdens of war, which his honor has assessed at a fine of \$2.50 and costs."

A CORRECT JUDGMENT.—From an old volume of "Harper's Monthly" we get the story that in Buffalo many years ago, when Judge Stryker was on the common pleas bench, there was an elderly lawyer named Root who sometimes appeared in court when he had taken a drop too much. On one of these occasions he persisted in interrupting the court with irrelevant remarks. Every time he was ordered to sit down he obeyed but soon popped up again. Finally the exasperated judge exclaimed: "Sit down, Mr. Root, and stay there. You are drunk." "I will cheerfully obey your honor," said the offender, "inasmuch as it is the first correct judgment rendered by the court this term."

RES JUDICATA.—The conclusiveness of an entry of the death of a woman on the records of court recently led to her discharge when she subsequently appeared in court in Chattanooga. The attorney general took her by the arm, and walking up to the judge's stand, said: "Here is our dead defendant. I think we had better try her." To which the court replied, "I think not. We have her on the record as dead. Rose, you will have to go home and die. Let the former order stand."

DISCLAIMING RELATIONSHIP.—A newspaper report that a man of the name of D had been fined 10s. for drunkenness was immediately followed, says the English "Law Notes," with a public notice by another man of the same surname that he was in no way connected with the other. But there was an echo to this. The next issue contained the following:

"Thanks.

"I, George D. who was fined 10s. for being drunk, beg to return thanks to Mr. Wm. George D. for publicly notifying that I am in no way connected with him or his family."

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